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No. 1047

In the Supreme Court of the United States

OCTOBER TERM, 1968

CITY OF CHICAGO and BOARD OF TRADE OF THE CITY OF CHICAGO, Appellants

v.

UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, ILLINOIS CENTRAL RAILROAD COMPANY, et al.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS

BRIEF AMICUS CURIAE OF TOLEDO-LUCAS COUNTY PORT AUTHORITY IN SUPPORT OF JURISDICTIONAL STATEMENT

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March, 1969

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INTRODUCTION

This brief amicus curiae is filed herein, pursuant to Supreme Court Rule 42 (4), in support of the Jurisdictional Statement of the Appellants.

The Toledo-Lucas County Port Authority, hereinafter referred to as "Port Authority" is a duly constituted public port authority, organized and operating pursuant to Chapter 4582 of the Ohio Revised Code, responsible for the establishment and maintenance of the Port of Toledo as an international deep water port and for the development of the movement of cargo through that port.

The Port Authority concurs in and fully supports the Jurisdictional Statement of the Appellants both with regard to the issues presented and with regard to the discussion

of the substantiality thereof. It is not the purpose or intent of the Port Authority to establish or broaden the questions presented to this Honorable Court nor to develop the legal authorities upon which this controversy is founded. Rather, it is the purpose hereof to demonstrate the importance of the resolution of those questions to the Port of Toledo and to the Great Lakes range of ports and the dangers to both inherent in the absence of a dispositive ruling by this Court concerning the correct interpretation of Section 3 (1) of the Interstate Commerce Act.

THE QUESTIONS PRESENTED TO THIS COURT ARE SUBSTANTIAL

Of special relevance to the Port Authority is the statement on page 14 of the Jurisdictional Statement that "determination of the legal issues here involved is of particular importance to other Great Lakes ports which find themselves in much the same situation as is Chicago in their efforts to secure lawful and proper export-import inland freight rates. This is the first court test of the application of the Commission's arbitrary policy of port equalization to a Great Lakes port since the opening of the new St. Lawrence Seaway in 1959."

The St. Lawrence Seaway was opened at great public investment to permit the establishment of deep water ports on the Great Lakes in the heart of a vast area of production of export commodities in order to permit the establishment of economic and rational traffic patterns for the export of such commodities from those regions. In order to develop these ports in competition with the established larger tidewater ports it is essential that the protection accorded by Section 3 (1) of the Interstate Commerce Act against undue or unreasonable preference or advantage by common carriers to ports or port districts be properly enforced and that proper interpretation of that Section be definitively established.

The Port Authority, like most agencies charged with the development of the ports on the Great Lakes, is a relatively young organization lacking the economic and political powers and influence available to the older ports and to the rail carriers. It is simply not economically feasible, or indeed possible, for it and others similarly situated to seek remedial relief through the Courts on a case by case basis as unlawful rates are from time to time established. The Port Authority has been faced with this problem in regard to its protest of Trunk Line - Central Territory Railroads - Freight Tariff C/TN 245-I, ICC No. C-375 Supplement No. 151, and was forced by economic pressure wholly unrelated to the merits of its protest to capitulate upon the adverse decision of the Commission.

Like incidents have occurred and will no doubt continue to occur unless the instant case determines the proper basis for the establishment of rates to the various ports and port ranges. The economic impact on all Great Lakes ports of resolution of the questions presented in this case is immeasurable. The continued existence of some Great Lakes ports may well depend upon acceptance of this case for decision on its merits.

From the inception of the St. Lawrence Seaway, certain rail carriers have openly reflected a purpose to divert export cargo originating within geographic proximity to Great Lakes ports to the established tidewater ports. Those rail carriers have alternatively justified greatly disparate rates, transportation services considered, on the basis of a contrived and absurd purpose attributed by them to Section 3 (1) of the Interstate Commerce Act to foster export-import equalization of all ports on a single commodity basis by the arbitrary establishment of rates inversely proportioned to transportation services rendered as in the instant case; and, in other instances, on the basis of the competition for inland transportation of commodities for export including actual export transshipment from

Great Lakes ports through the St. Lawrence Seaway. The latter premise was tendered to justify Trunk Line - Central Territory Railroads - Freight Tariff C/TN 245-I, ICC No. C-375 Supplement No. 151. The Port Authority's vigorous protest and petition for suspension was denied by the Commission. Effectuation of the protested rates caused the Port of Toledo to lose all but a token of its soybean meal tonnage. From 149,336 net tons in 1967, tonnage fell to 1,728 net tons in 1968. This is a loss of 98.8% of a cargo originating in Toledo's natural tributary hinterland caused by preferential rail rates to the East Coast. Equally damaging losses could occur with respect to any other commodity singled out by the rail carriers for favored treatment on similar grounds.

It is inconceivable that the Commission can justify one disparate rate on the basis of port equalization and another on the basis of inland transportation competition by a port with a rail carrier serving that port. The latter basis of justification, utilized in the above cited tariff, ignores entirely the existence of the Great Lakes ports and regards all forms of shipments to coastal points as domestic traffic permitting railroads to compete for shipments to the Atlantic Ocean with the Great Lakes ports also served by such railroads.

So long as these railroads regard themselves as competitors of the Great Lakes ports, there can be no reasonable expectation of even-handed treatment in the rates they establish with relation to the Great Lakes ports. The problem gains peculiar urgency since the merger of formerly competing rail carriers in a few huge systems. The responsibility of the Commission to enforce the safeguards which the Act establishes against prejudicial or preferential treatment is necessarily increased as the effects of competition are diminished.

As noted in the Jurisdictional Statement filed by Appellants, this litigation is now in its sixth year. It would be

an unmitigated hardship to require these ports to institute new proceedings before the Commission upon rates hereafter established in violation of Section 3 (1) without specific guidelines for their disposition. Additional delay in obtaining a dispositive interpretation of the substantative law, estimated to endure some six or eight years, will operate to create mounting losses of cargo for the involved ports and to jeopardize their functional role as ports of transhipment.

CONCLUSION

For the foregoing reason, we submit that the questions presented are substantial and are of public importance and that the Court should note jurisdiction of this appeal; or, in the alternative, if the Court should believe that it is necessary or desirable that the District Court first pass on these questions, this Court should vacate the judgment of the District Court and remand the cause to that court with instructions to decide the questions of law presented.

Respectfully submitted,

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